FORM NLRB-501 (2-18)

## UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE		
Case 32-CA-273087	Date Filed 2/19/2021	

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in	which the alleged unfair labor practice occurred or is occurring	ıg.	
1. EMPL	OYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer  Clayer Inc. DRA Clayer Construction Company Inc.		b. Tel. No. (314) 429-5100	
Clayco Inc. DBA Clayco Construction Company Inc.		c. Cell No.	
A Address (Chrost att. state and 710 and 1	La Caralacian Danassantalina	f. Fax. No.	
d. Address (Street, city, state, and ZIP code)	e. Employer Representative	g. e-mail	
2199 Innerbelt Business Center (b) (6), (b) (7)(C) St Louis, Missouri 63114 (b) (6), (b) (7)(C) , Clayco		@Claycorp.	
		h. Number of workers employed	
i. Type of Establishment (factory, mine, wholesaler, etc.) General Contractor	j. Identify principal product or service Construction		
The above-named employer has engaged in and is engage	ging in unfair labor practices within the meaning of section	8(a), subsections (1) and	
(list subsections)	of the National Labor Re	elations Act, and thest unfair labor	
practices are practices affecting commerce within the mean the Act and the Postal Reorganization Act.	aning of the Act, or these unfair labor practices affecting co	ommerce within the meaning of	
	oyer has violated the Act by discriminatorily and in	retaliation for protected concerted	
activity, interfered with the exercise of protected ri			
agent with a "dirt nap" when the Union's agent vis the job site. These events occurred at the company			
named employer has interfered with, restrained, an			
The state of the s			
150692			
3. Full name of party filing charge (if labor organization, gi Pile Drivers Local Union No. 34	ive full name, including local name and number)		
4a. Address (Street and number, city, state, and ZIP code	)	4b. Tel. No.	
A DECEMBER OF THE PROPERTY OF		(510) 635-4227	
55 Hegenberger Place Oakland, CA 94621		4c. Cell No.	
		4d. Fax No.	
		(510) 635-1234	
		4e. e-mail	
		tlipscomb@nccrc.org	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) United Brotherhood of Carpenters and Joiners of America			
C DEOL	ADATION	Tel. No.	
6. DECL/  Neclare that have read the above  a/e true to the best of m	ve charge and that the statements by knowledge and belief.	(916) 443-6600	
Matthew J. Gauger, Attorney		Office, if any, Cell No.	
(signature of representative or person making charge) (Print/type name and title or office, if any)		Fax No. (916) 442-0244	
Address 431 I Street, Suite 202, Sacramento, CA 9	P5814 Date Feb 19, 2021	e-mail mgauger@unioncounsel.net	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.





REGION 32 1301 Clay St Ste 300N Oakland, CA 94612-5224 Agency Website: www.nlrb.gov Telephone: (510)637-3300 Fax: (510)637-3315 Download NLRB Mobile App

February 22, 2021

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Clayco, Inc. d/b/a Clayco Construction Company, Inc. 2199 Innerbelt Business Center St. Louis, MO 63114

Re: Clayco, Inc. dba Clayco Construction

Company, Inc. Case 32-CA-273087

Dear (b) (6), (b) (7)(C)

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Field Examiner STEPHEN M. SLOPER whose telephone number is (510)671-3045. If this Board agent is not available, you may contact Acting Assistant to the Regional Director HOKULANI VALENCIA whose telephone number is (510)671-3047.

<u>Right to Representation</u>: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701*, *Notice of Appearance*. This form is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a>, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

<u>Presentation of Your Evidence</u>: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

<u>Preservation of all Potential Evidence:</u> Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

<u>Prohibition on Recording Affidavit Interviews:</u> It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

<u>Correspondence</u>: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, <u>www.nlrb.gov</u>. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not

have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a> or from an NLRB office upon your request. NLRB Form 4541, Investigative Procedures offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

VALERIE HARDY-MAHONEY Regional Director

Valerie Hardy-Makoney

#### **Enclosures:**

- 1. Copy of Charge
- 2. Commerce Questionnaire

cc: (b) (6), (b) (7)(C), Clayco Clayco, Inc. d/b/a Clayco Construction Company, Inc. 2199 Innerbelt Business Center St. Louis, CA 63114

FORM NLRB-5081 (3-11)	NATIONAL LABOR	RELATIONS	BOARD			
QUESTIONNAIRE ON COMMERCE INFORMATION						
Please read carefully, answer all applicable items, and	return to the NLRB Office. If	f additional spac	ce is required, please add a	page and i	dentify item number.	
CASE NAME					NUMBER	
				32-CA	-273087	
1. EXACT LEGAL TITLE OF ENTITY (As filed	with State and/or stated i	n legal docum	ents forming entity)			
2. TYPE OF ENTITY						
[ ] CORPORATION [ ] LLC [ ] LLP	[ ] PARTNERSHIP [ ]	SOLE PROP	RIETORSHIP [ ] OT	THER (Spe	cify)	
3. IF A CORPORATION or LLC	D MANG ADDRESS	AND DEL A	TIONGLID /	1 :1: \0	E ALL DELATED E	
A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS	S, AND KELA	TIONSHIP (e.g. parent, su	bsidiary) C	F ALL KELATED E	ENTITIES
4. IF AN LLC OR ANY TYPE OF PARTNERSH	IIP, FULL NAME AND A	ADDRESS OF	ALL MEMBERS OR PA	ARTNERS	S	
5. IF A SOLE PROPRIETORSHIP, FULL NAM	E AND ADDRESS OF PR	ROPRIETOR				
6. BRIEFLY DESCRIBE THE NATURE OF YO	UR OPERATIONS (Prod	ducts handled o	r manufactured, or nature	of services	s performed).	
7A. PRINCIPAL LOCATION:	7R R	RANCH LOC	ATIONS:			
A. TRIVEITAL LOCATION.	7B. B.	KANCH LOC	ATIONS.			
8. NUMBER OF PEOPLE PRESENTLY EMPL	OYED	8. NUMBER OF PEOPLE PRESENTLY EMPLOYED				
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## PRIVACY ACT STATEMENT

DATE

E-MAIL ADDRESS

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

SIGNATURE

NAME AND TITLE (Type or Print)

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

### **UNITED STATES OF AMERICA**

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

CLAYCO, INC. DBA CLAYCO	
CONSTRUCTION COMPANY, IN	C.

**Charged Party** 

and

Case 32-CA-273087

### PILE DRIVERS LOCAL UNION NO. 34

**Charging Party** 

#### AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on February 22, 2021, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

## (b) (6), (b) (7)(C)

Clayco, Inc. d/b/a Clayco Construction Company, Inc. 2199 Innerbelt Business Center St. Louis, MO 63114

## (b) (6), (b) (7)(C)

Clayco, Inc. d/b/a Clayco Construction Company, Inc. 2199 Innerbelt Business Center St. Louis, CA 63114

February 22, 2021	Donna Gentry, Designated Agent of NLRB
Date	Name
	/s/ Donna Gentry
	Signature





REGION 32 1301 Clay St Ste 300N Oakland, CA 94612-5224 Agency Website: www.nlrb.gov Telephone: (510)637-3300 Fax: (510)637-3315 Download NLRB Mobile App

February 22, 2021

Timothy Lipscomb Pile Drivers Local Union No. 34 55 Hegenberger Place Oakland, CA 94621

Re: Clayco, Inc. dba Clayco Construction

Company, Inc. Case 32-CA-273087

Dear Mr. Lipscomb:

The charge that you filed in this case on February 19, 2021 has been docketed as case number 32-CA-273087. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Field Examiner STEPHEN M. SLOPER whose telephone number is (510)671-3045. If this Board agent is not available, you may contact Acting Assistant to the Regional Director HOKULANI VALENCIA whose telephone number is (510)671-3047.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701*, *Notice of Appearance*. This form is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a>, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you

fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

<u>Preservation of all Potential Evidence:</u> Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

<u>Prohibition on Recording Affidavit Interviews:</u> It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

<u>Correspondence</u>: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, <u>www.nlrb.gov</u>. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a> or from an NLRB office upon your request. NLRB Form 4541, Investigative Procedures offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

Company, Inc. Case 32-CA-273087

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

VALERIE HARDY-MAHONEY

Valerie Hardy-Makoney

Regional Director

cc: Matthew J. Gauger, Attorney Weinberg, Roger, & Rosenfeld 431 I Street, Suite 202 Sacramento, CA 95814-2320 NATIONAL LABO
REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

Agency Website: www.nlrb.gov Telephone: (510)637-3300 Fax: (510)637-3315

June 11, 2021

TOD O'DONOGHUE, ATTORNEY HESSE MARTONE, P.C. 530 MARYVILLE CENTRE DRIVE, SUITE 250 ST. LOUIS, MO 63141

ANDREW J. MARTONE, ATTORNEY HESSE MARTONE, P.C. 530 MARYVILLE CENTRE DRIVE, SUITE 250 ST. LOUIS, MO 63141

> Re: Clayco, Inc. dba Clayco Construction Company, Inc. Cases 32-CA-273087 32-CA-274681

Dear Mr. O'Donoghue and Mr. Martone:

This is to advise you that I have approved the withdrawal of the charges in the above cases.

Very truly yours,

Valerie Hardy-Mahoney

Regional Director

cc: TIMOTHY LIPSCOMB, UNION REPRESENTATIVE PILE DRIVERS LOCAL UNION NO. 34 55 HEGENBERGER PLACE OAKLAND, CA 94621

> MATTHEW J. GAUGER, ATTORNEY WEINBERG, ROGER, & ROSENFELD 431 I STREET, SUITE 202 SACRAMENTO, CA 95814-2320

Company, Inc. Case 32-CA-273087

(b) (6), (b) (7)(C)

CLAYCO, INC. DBA CLAYCO CONSTRUCTION COMPANY, INC. 2199 INNERBELT BUSINESS CENTER SAINT LOUIS, MO 63114

(b) (6), (b) (7)(C) CLAYCO

CLAYCO, INC. DBA CLAYCO CONSTRUCTION COMPANY, INC. 2199 INNERBELT BUSINESS CENTER SAINT LOUIS, MO 63114

FORM NLRB-501 (2-18)

## UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE		
Case	Date Filed	
32-CA-274681	3/25/2021	

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in	which the alleged unfair labor practice occurred or is occurri	ng.
1. EMPL	OYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer		b. Tel. No. (314) 429-5100
Clayco Inc. dba Clayco Construction Company Inc.		c. Cell No.
		f. Fax. No.
d. Address (Street, city, state, and ZIP code)	e. Employer Representative	g. e-mail
2199 Innerbelt Business Center St Louis, Missouri 63114 (b) (6), (b) (7)(C)		© (@claycorp.
		h. Number of workers employed
i. Type of Establishment (factory, mine, wholesaler, etc.) General Contractor	j. Identify principal product or service Construction	
The above-named employer has engaged in and is engage	ging in unfair labor practices within the meaning of section	8(a), subsections (1) and
(list subsections)	of the National Labor R	elations Act, and thest unfair labor
practices are practices affecting commerce within the mea	aning of the Act, or these unfair labor practices affecting o	ommerce within the meaning of
the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise state Within the past six months, the above-named empl activity, interfered with the exercise of protected ri agent while the Union attempted to contact worker These events occurred at the company's project in has interfered with, restrained, and coerced employ 150718	oyer has violated the Act by discriminatorily and in ghts by surveilling, stalking, menacing and become s from public property and intimidating workers of San Joaquin County, California. By these and other	n retaliation for protected concerted ing aggressive against the Union in their breaks through surveillance er acts, the above-named employer
3. Full name of party filing charge (if labor organization, gir Pile Drivers Local Union No. 34	ive full name, including local name and number)	
4a. Address (Street and number, city, state, and ZIP code	)	4b. Tel. No. (510) 635-4227
55 Hegenberger Place Oakland, CA 94621		4c. Cell No.
		4d. Fax No. (510) 635-1234
		4e. e-mail tlipscomb@nccrc.org
5. Full name of national or international labor organization	of which it is an affiliate or constituent unit (to be filled in	when charge is filed by a labor organization)
United Brotherhood of Carpenters and Joiners of A	merica	
I declare that I have read the above	ARATION ve charge and that the statements by knowledge and belief.	Tel. No. (916) 443-6600
177 ×2	Matthew J. Gauger, Attorney	Office, if any, Cell No.
(signature of representative or person making charge)	(Print/type name and title or office, if any)	Fax No. (916) 442-0244
Address 431 1 Street, Suite 202, Sacramento, CA 9	95814 Date Mar 25, 2021	e-mail mgauger@unioncounsel.net

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

### CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of Sacramento County, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 431 I Street, Suite 202, Sacramento, California 95814.

On March 25, 2021, I served the within:

Pile Drivers Local Union No. 34 v. Clayco Inc. dba Clayco Construction Company Inc.

### CHARGE AGAINST EMPLOYER

[X] BY MAIL: I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Sacramento, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

[] BY UPS NEXT DAY AIR: I caused a copy of each document listed herein to be served by UPS Next Day Air, addressed as indicated herein.

[] BY FACSIMILE: I caused to be transmitted each document listed herein via the fax number(s) listed on the attached service list.

BY E-MAIL: I electronically served the above-described document on the following parties by electronically transmitting the foregoing to the e-mail addresses listed.

## (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)
Clayco Inc. dba Clayco Construction Company Inc.

2199 Innerbelt Business Center

St Louis, Missouri 63114

@claycorp.com

@claycorp.com

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(b) (6), (b) (7)(C)

150718\1156711

EINBERG, ROGER &28 ROSENFELD rofessional Corporation (916) 443-6600

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431 I Street, Ste. 202 acramento, CA 95814





REGION 32 1301 Clay St Ste 300N Oakland, CA 94612-5224 Agency Website: www.nlrb.gov Telephone: (510)637-3300 Fax: (510)637-3315 Download NLRB Mobile App

March 26, 2021

(b) (6), (b) (7)(C)

Clayco, Inc. d/b/a Clayco Construction Company, Inc. 2199 Innerbelt Business Center St. Louis, MO 63114

Re: Clayco, Inc. dba Clayco Construction

Company, Inc. Case 32-CA-274681

Dear (b) (6), (b) (7)(C)

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Field Examiner STEPHEN M. SLOPER whose telephone number is (510)671-3045. If this Board agent is not available, you may contact Acting Assistant to the Regional Director HOKULANI VALENCIA whose telephone number is (510)671-3047.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a>, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

<u>Presentation of Your Evidence</u>: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

<u>Preservation of all Potential Evidence:</u> Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

<u>Prohibition on Recording Affidavit Interviews:</u> It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

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If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not

have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a> or from an NLRB office upon your request. NLRB Form 4541, Investigative Procedures offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

VALERIE HARDY-MAHONEY Regional Director

Valerie Hardy-Makoney

#### **Enclosures:**

- 1. Copy of Charge
- 2. Commerce Questionnaire

cc: (b) (6), (b) (7)(C), Clayco Clayco, Inc. d/b/a Clayco Construction Company, Inc. 2199 Innerbelt Business Center St. Louis, CA 63114

FORM NLRB-5081	NATIONAL LABOR RELA	ATIONS BOARD		
QUESTIONNAIRE ON COMMERCE INFORMATION				
Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.				
CASE NAME  CASE NUMBER				
32-CA-274681				
1. EXACT LEGAL TITLE OF ENTITY (As filed	with State and/or stated in legal	documents forming entity)		
2. TYPE OF ENTITY				
[] CORPORATION [] LLC [] LLP	] PARTNERSHIP [ ] SOL	E PROPRIETORSHIP [ ] OTHER	R (Specify)	
3. IF A CORPORATION or LLC				
A. STATE OF INCORPORATION	B. NAME, ADDRESS, AND	RELATIONSHIP (e.g. parent, subsidi	ary) OF ALL RELATED F	ENTITIES
OR FORMATION				
4. IF AN LLC OR ANY TYPE OF PARTNERSH	IP, FULL NAME AND ADDRI	ESS OF ALL MEMBERS OR PART	NERS	
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6. BRIEFLY DESCRIBE THE NATURE OF YO	UR OPERATIONS (Products h	andled or manufactured, or nature of se	ervices performed).	
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8. NUMBER OF PEOPLE PRESENTLY EMPLOYED				
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SIGNATURE

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations
Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71
Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause
the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

E-MAIL ADDRESS

DATE

### **UNITED STATES OF AMERICA**

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

CLAYCO, INC. DBA CLAYCO	
CONSTRUCTION COMPANY,	INC.

**Charged Party** 

and

Case 32-CA-274681

### PILE DRIVERS LOCAL UNION NO. 34

**Charging Party** 

#### AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on March 26, 2021, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

## (b) (6), (b) (7)(C)

Clayco, Inc. d/b/a Clayco Construction Company, Inc. 2199 Innerbelt Business Center St. Louis, MO 63114

## (b) (6), (b) (7)(C), Clayco

Clayco, Inc. d/b/a Clayco Construction Company, Inc. 2199 Innerbelt Business Center St. Louis, CA 63114

March 26, 2021	Vicky Luu, Designated Agent of NLRB
Date	Name
	/s/ V Luu
	Signature



Agency Website: www.nlrb.gov Telephone: (510)637-3300 Fax: (510)637-3315

Download NLRB Mobile App

March 26, 2021

Timothy Lipscomb Pile Drivers Local Union No. 34 55 Hegenberger Place Oakland, CA 94621

**REGION 32** 

1301 Clay St Ste 300N

Oakland, CA 94612-5224

Re: Clayco, Inc. dba Clayco Construction

Company, Inc. Case 32-CA-274681

Dear Mr. Lipscomb:

The charge that you filed in this case on March 25, 2021 has been docketed as case number 32-CA-274681. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Field Examiner STEPHEN M. SLOPER whose telephone number is (510)671-3045. If this Board agent is not available, you may contact Acting Assistant to the Regional Director HOKULANI VALENCIA whose telephone number is (510)671-3047.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701*, *Notice of Appearance*. This form is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a>, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you

fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

<u>Preservation of all Potential Evidence:</u> Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

<u>Prohibition on Recording Affidavit Interviews:</u> It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

<u>Correspondence</u>: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, <u>www.nlrb.gov</u>. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a> or from an NLRB office upon your request. NLRB Form 4541, Investigative Procedures offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

Case 32-CA-274681

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

VALERIE HARDY-MAHONEY

Valerie Hardy-Makoney

Regional Director

cc: Matthew J. Gauger, Attorney Weinberg, Roger, & Rosenfeld 431 I Street, Suite 202

Sacramento, CA 95814-2320

FORM NLRB-501 (2-18)

## UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER

DO NOT WRITE IN TH	IIS SPACE
Case 32-CA-275700	Date Filed 04/15/2021

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in		ng.
	OYER AGAINST WHOM CHARGE IS BROUGHT	The Tall No.
a. Name of Employer		b. Tel. No. (314) 429-5100
Clayco Inc. dba Clayco Construction Company Inc.		c. Cell No.
		f. Fax. No.
d. Address (Street, city, state, and ZIP code)	e. Employer Representative	g. e-mail
2199 Innerbelt Business Center St Louis, Missouri 63114	(b) (6), (b) (7)(C)	© (© (©) (©) (© Claycorp.
		h. Number of workers employed
i. Type of Establishment (factory, mine, wholesaler, etc.) General Contractor	j. Identify principal product or service Construction	
The above-named employer has engaged in and is engage	ging in unfair labor practices within the meaning of section	8(a), subsections (1) and
(list subsections)	of the National Labor R	Relations Act, and thest unfair labor
practices are practices affecting commerce within the mea	aning of the Act, or these unfair labor practices affecting o	ommerce within the meaning of
the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise state Within the past six months, the above-named empl	ement of the facts constituting the alleged unfair labor practices the second s	rices)
activity, interfered with the exercise of protected ri		
	ers on their breaks and before and after work through	
occurred at the company's project in San Joaquin (	County, California. By these and other acts, the ab-	ove-named employer has interfered
with, restrained, and coerced employees in the exe	rcise of their rights guaranteed in Section 7 of the	Act.
151532		
3. Full name of party filing charge (if labor organization, graph Pile Drivers Local Union No. 34	ive full name, including local name and number)	
4a. Address (Street and number, city, state, and ZIP code	9)	4b. Tel. No.
		(510) 635-4227
55 Hegenberger Place Oakland, CA 94621		4c. Cell No.
		4d. Fax No.
		(510) 635-1234
		4e. e-mail tlipscomb@nccrc.org
5. Full name of national or international labor organization	of which it is an affiliate or constituent unit (to be filled in	when charge is filed by a labor organization)
United Brotherhood of Carpenters and Joiners of A		men orange to mee by a table or again and
6. DECL	ARATION	Tel. No.
	ve charge and that the statements by knowledge and belief.	(916) 443-6600
#/2	Matthew J. Gauger, Attorney	Office, if any, Cell No.
(signature of representative or person making charge)	(Print/type name and title or office, if any)	Fax No. (916) 442-0244
Address 431 I Street, Suite 202, Sacramento, CA	95814 Date Apr 15, 2021	e-mail mgauger@unioncounsel.net

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.





REGION 32 1301 Clay St Ste 300N Oakland, CA 94612-5224 Agency Website: www.nlrb.gov Telephone: (510)637-3300 Fax: (510)637-3315 Download NLRB Mobile App

April 16, 2021

(b) (6), (b) (7)(C) Clayco Inc.	(b) (6), (b) (7)(C), Clayco Inc.
2199 Innerbelt Business Center	2199 Innerbelt Business Center
Saint Louis MO 63114	Saint Louis MO 63114

Re: Clayco, Inc. dba

Clayco Construction Company, Inc.

Case 32-CA-275700

Dear (b) (6), (b) (7)(C):

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Field Examiner STEPHEN M. SLOPER whose telephone number is (510)671-3045. If this Board agent is not available, you may contact Acting Assistant to the Regional Director HOKULANI VALENCIA whose telephone number is (510)671-3047.

<u>Right to Representation</u>: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701*, *Notice of Appearance*. This form is available on our website, <u>www.nlrb.gov</u>, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

<u>Presentation of Your Evidence</u>: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Case 32-CA-275700

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

<u>Preservation of all Potential Evidence:</u> Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

<u>Prohibition on Recording Affidavit Interviews:</u> It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

<u>Correspondence:</u> All documents submitted to the Region regarding your case MUST be filed through the Agency's website, <u>www.nlrb.gov</u>. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not

Clayco, Inc. dba Clayco Construction Company, Inc. Case 32-CA-275700

have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a> or from an NLRB office upon your request. NLRB Form 4541, Investigative Procedures offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

VALERIE HARDY-MAHONEY Regional Director

Valerie Hardy-Mahoney

#### Enclosures:

- 1. Copy of Charge
- 2. Commerce Questionnaire

cc:

FORM NLRB-508 (3-11)		NATIONAL LA	BOR RELA	TIONS BOARD			
QUESTIONNAIRE ON COMMERCE INFORMATION							
Please read ca	refully, answer all applicable items, and r	eturn to the NLRB Off	fice. If additio	nal space is required, please	add a page ar	d identify item number.	
CASE NAME						SE NUMBER CA-275700	
1. EXACT L	EGAL TITLE OF ENTITY (As filed	with State and/or st	ated in legal	documents forming entity)			
2. TYPE O	F ENTITY						
[ ] CORPOR	ATION [] LLC [] LLP [	] PARTNERSHIP	[] SOLE	PROPRIETORSHIP [	] OTHER (S	Specify)	
3. IF A COR	PORATION or LLC						
A. STATE OF OR FORM	INCORPORATION ATION	B. NAME, ADD	DRESS, AND	RELATIONSHIP (e.g. parer	nt, subsidiary	) OF ALL RELATED I	ENTITIES
4. IF AN LI	C OR ANY TYPE OF PARTNERSH	IP, FULL NAME A	ND ADDRE	SS OF ALL MEMBERS O	R PARTNE	RS	
5. IF A SOL	E PROPRIETORSHIP, FULL NAM	E AND ADDRESS (	OF PROPRI	ETOR			
6. BRIEFLY	DESCRIBE THE NATURE OF YO	UR OPERATIONS	(Products ha	ndled or manufactured, or n	ature of servi	ces performed).	
7A. PRINCI	PAL LOCATION:	7	7B. BRANC	H LOCATIONS:			
8 NUMBER	OF PEOPLE PRESENTLY EMPLO	OVED					
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NAME AND TITLE (Type or Print) SIGNATURE E-MAIL ADDRESS DATE

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

### PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

### **UNITED STATES OF AMERICA**

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

CLAYCO, INC. DBA CLAYCO
<b>CONSTRUCTION COMPANY, INC.</b>

**Charged Party** 

and

Case 32-CA-275700

### PILE DRIVERS LOCAL UNION NO. 34

**Charging Party** 

## AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on April 16, 2021, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

(b) (6), (b) (7)(C)

Clayco Inc. 2199 Innerbelt Business Center Saint Louis MO 63114 (b) (6), (b) (7)(C), Clayco

Clayco Inc. 2199 Innerbelt Business Center Saint Louis MO 63114

April 16, 2021	Caroline Barker, Designated Agent of NLRB
Date	Name
	/a/ Carallina Dadam
	/s/ Caroline Barker
	Signature



REGION 32 1301 Clay St Ste 300N Oakland, CA 94612-5224 Agency Website: www.nlrb.gov Telephone: (510)637-3300 Fax: (510)637-3315 Download NLRB Mobile App

April 16, 2021

Timothy Lipscomb, Union Representative Pile Drivers Local Union No. 34 55 Hegenberger Place Oakland CA 94621

Re: Clayco, Inc. dba

Clayco Construction Company, Inc.

Case 32-CA-275700

Dear Mr. Lipscomb:

The charge that you filed in this case on April 15, 2021 has been docketed as case number 32-CA-275700. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

<u>Investigator</u>: This charge is being investigated by Field Examiner STEPHEN M. SLOPER whose telephone number is (510)671-3045. If this Board agent is not available, you may contact Acting Assistant to the Regional Director HOKULANI VALENCIA whose telephone number is (510)671-3047.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701*, *Notice of Appearance*. This form is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a>, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you

fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

<u>Preservation of all Potential Evidence:</u> Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

<u>Prohibition on Recording Affidavit Interviews:</u> It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

<u>Correspondence</u>: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, <u>www.nlrb.gov</u>. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, <a href="www.nlrb.gov">www.nlrb.gov</a> or from an NLRB office upon your request. NLRB Form 4541, Investigative Procedures offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

Case 32-CA-275700

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

VALERIE HARDY-MAHONEY

Valerie Hardy-Makoney

Regional Director

cc: Matthew J. Gauger, Attorney Weinberg Roger & Rosenfeld 431 I Street Suite 202

Sacramento CA 95814

NATIONAL LABO
REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

Agency Website: www.nlrb.gov Telephone: (510)637-3300 Fax: (510)637-3315

June 11, 2021

MATTHEW J. GAUGER, ATTORNEY WEINBERG ROGER & ROSENFELD 431 I STREET, SUITE 202 SACRAMENTO, CA 95814

Re: Clayco, Inc. dba Clayco Construction

Company, Inc. Case 32-CA-275700

Dear Mr. Gauger:

We have carefully investigated and considered your charge that Clayco, Inc. dba Clayco Construction Company, Inc. has violated the National Labor Relations Act.

Conditional Decision to Dismiss: Based on that investigation, it appears that your charge may have merit. However, I have conditionally decided to dismiss your charge 6 months from today because there have not been any meritorious charges against Clayco, Inc. dba Clayco Construction Company, Inc. within the past several years, and because the conduct of photographing Union representatives passing out literature to exiting vehicles was isolated in nature and of limited duration. Further, there is no evidence the conduct has an ongoing unlawful effect on employees' terms and conditions of employment.

If a meritorious charge involving other unfair labor practices is filed against the Charged Party during that period, I will reconsider whether further proceedings on this charge are warranted.

**Charging Party's Right to Appeal:** The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at <a href="www.nlrb.gov">www.nlrb.gov</a>. See <a href="www.nlrb.gov">User Guide</a>. A video demonstration which provides <a href="step-by-step instructions">step-by-step instructions</a> and frequently asked questions are also available at <a href="www.nlrb.gov">www.nlrb.gov</a>. If you require additional assistance with E-Filing, please contact <a href="mailto:e-Filing@nlrb.gov">e-Filing@nlrb.gov</a>.

Clayco, Inc. dba Clayco Construction Company, Inc. Case 32-CA-275700

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on June 25, 2021. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than June 24, 2021. If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before June 25, 2021.** The request may be filed electronically through the *E-File Documents* link on our website <a href="www.nlrb.gov">www.nlrb.gov</a>, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after June 25, 2021, **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

**Confidentiality:** We will not honor requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Very truly yours,

Valerie Hardy-Mahoney

Regional Director

Company, Inc. Case 32-CA-275700

(b) (6), (b) (7)(C)

CLAYCO, INC. DBA CLAYCO CONSTRUCTION COMPANY, INC. 2199 INNERBELT BUSINESS CENTER SAINT LOUIS, MO 63114

(b) (6), (b) (7)(C) , CLAYCO CLAYCO, INC. DBA CLAYCO CONSTRUCTION COMPANY, INC. 2199 INNERBELT BUSINESS CENTER SAINT LOUIS, MO 63114

ANDREW J. MARTONE, ATTORNEY AT LAW HESSE MARTONE, P.C. 530 MARYVILLE CENTRE DRIVE, SUITE 250 ST. LOUIS, MO 63141

TOD O'DONOGHUE, ATTORNEY HESSE MARTONE, P.C. 530 MARYVILLE CENTRE DRIVE, SUITE 250 ST. LOUIS, MO 63141

TIMOTHY LIPSCOMB, UNION REPRESENTATIVE PILE DRIVERS LOCAL UNION NO. 34 55 HEGENBERGER PLACE OAKLAND, CA 94621

## UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

## APPEAL FORM

Date:

To: General Counsel

Attn: Office of Appeals National Labor Relations Board 1015 Half Street SE Washington, DC 20570-0001	
Please be advised that an appeal is hereb National Labor Relations Board from the action of issue a complaint on the charge in	
Case Name(s).	
Case No(s). (If more than one case number, include taken.)	de all case numbers in which appeal is
_	(Signature)

#### **E-FILING TO APPEALS**

- 1. **Extension of Time**: This document is used when the Charging Party is asking for more time to efile an Appeal.
  - If an Extension of Time is e-filed, and there are additional documents to be e-filed simultaneously with it, please e-file those documents under the selection **Correspondence**.
  - After an Extension of Time has already been e-filed, any **additional** materials to add to the Extension of Time should be e-filed under **Correspondence**.
- 2. **File an Appeal**: If the Charging Party does not agree with the Region's decision on the case, an Appeal can be e-filed.
  - Only one (1) Appeal can be e-filed to each determination in the Region's decision letter that is received.
  - After an Appeal has been e-filed, any **additional** materials to add to the Appeal should be e-filed under **Correspondence**.
- 3. **Notice of Appearance**: Either party can e-file a Notice of Appearance if there is a new counsel representing one side or a different counsel.
  - This document is only e-filed with the Office of Appeals after a decision has been made by the Region.
  - This document can be e-filed **before** an Appeal is e-filed.
- 4. **Correspondence**: Parties will **select** Correspondence when adding documents or supplementing the Appeal or Extension of Time.
  - Correspondence is used to e-file documents **after** an **Extension of Time, Appeal** or **Notice of Appearance** has been e-filed.
- 5. **Position Statement**: The Charging Party or Charged Party may e-file a Position Statement.
  - The Charging Party will e-file this document as a supplement of the Appeal.
  - The Charged Party will specifically file one to support the Region's decision.
  - This document should be e-filed after an Extension of Time, Appeal or Notice of Appearance has been e-filed.
- 6. **Withdrawal Request**: If the Charging Party decides to no longer pursue their appeal, he/she can e-file a Withdrawal Request to the Office of Appeals.
  - This document should be e-Filed after an Extension of Time, Appeal or Notice of Appearance has been e-filed.



7. The selections of **Evidence** or **Other** should no longer be used.



## OFFICE OF THE GENERAL COUNSEL

Washington, DC 20570

June 16, 2021

MATTHEW J. GAUGER, ESQ. WEINBERG ROGER & ROSENFELD 431 I ST STE 202 SACRAMENTO, CA 95814

Re: Clayco, Inc. dba Clayco Construction

Company, Inc. Case 32-CA-275700

Dear Mr. Gauger:

We have received your appeal. We will assign it for processing in accordance with Agency procedures, which include review of the investigatory file and your appeal in light of current Board law. We will notify you by email, if an email address is provided, and all other involved parties as soon as possible of our decision.

Sincerely,

Peter Sung Ohr Acting General Counsel

By:

Mark E. Arbesfeld, Director Office of Appeals

Mark E. Alberteld

cc: VALERIE HARDY-MAHONEY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
1301 CLAY ST STE 300N
OAKLAND, CA 94612-5224

TIMOTHY LIPSCOMB UNION REPRESENTATIVE PILE DRIVERS LOCAL UNION NO. 34 55 HEGENBERGER PL OAKLAND, CA 94621

## (b) (6), (b) (7)(C)

CLAYCO, INC. DBA CLAYCO CONSTRUCTION COMPANY, INC. 2199 INNERBELT BUSINESS CENTER SAINT LOUIS, MO 63114 ANDREW J. MARTONE, ESQ. HESSE MARTONE, P.C. 530 MARYVILLE CENTRE DR STE 250 ST. LOUIS, MO 63141

(b) (6), (b) (7)(C)
CLAYCO, INC. DBA CLAYCO
CONSTRUCTION COMPANY, INC.

CONSTRUCTION COMPANY, INC. 2199 INNERBELT BUSINESS CENTER SAINT LOUIS, MO 63114 TOD O'DONOGHUE, ESQ. HESSE MARTONE, P.C. 530 MARYVILLE CENTRE DR STE 250 ST. LOUIS, MO 63141

cl



### OFFICE OF THE GENERAL COUNSEL

Washington, DC 20570

July 22, 2021

MATTHEW J. GAUGER, ESQ. WEINBERG ROGER & ROSENFELD 431 I ST STE 202 SACRAMENTO, CA 95814

Re: Clayco, Inc. dba Clayco Construction

Company, Inc. Case 32-CA-275700

Dear Mr. Gauger:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of June 11, 2021.

The Regional Office investigation disclosed that the allegation had arguable merit and the Regional Director conditionally dismissed the allegation. The Region's decision to conditionally dismiss the charge appears warranted and it would not effectuate the National Labor Relations Act to proceed further. If, however, a meritorious charge involving similar or related unfair labor practices is filed against the Charged Party during the six-month period following the Region's conditional dismissal, you may contact the Region to reconsider whether further proceedings on the instant charge are warranted.

Accordingly, the appeal is denied.

Sincerely,

Peter Sung Ohr Acting General Counsel

Mark E. Albertell

By:

Mark E. Arbesfeld, Director Office of Appeals

cc: VALERIE HARDY-MAHONEY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
1301 CLAY ST STE 300N
OAKLAND, CA 94612-5224

TIMOTHY LIPSCOMB UNION REPRESENTATIVE PILE DRIVERS LOCAL UNION NO. 34 55 HEGENBERGER PL OAKLAND, CA 94621

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